automatically as the volume increases. Rather, the customer decides how many circuits to commit at all times. The Term and Volume Plans also have extremely reasonable shortfall provisions. Every 12 months, Verizon determines whether the customer's number of lines in service meets the committed amount. A customer may miss its commitment by up to 3 percent without paying any penalty. If it misses the commitment by more than 3 percent, shortfall penalties apply only for only 4 months, not the full 12 months.

12. Second, the Eight and Ten Year Term and Volume Plan does not really require a customer to subscribe for a full eight- or ten-year term. This Plan contains a "time in service credit," which, for example, enables a customer to sign up for only three or five years if it has completed five years' uninterrupted service under a Term Volume Plan. Accordingly, customers with a time-in-service-credit can subscribe to an additional three or five years and are eligible to receive greater discounts than are available under the shorter term three- or five-year commitments. In exchange, Verizon asks customers to commit 90 percent of their then in-service DS1 channel terminations with Verizon. Such terms and conditions are part of the *quid pro quo* that the customer agrees to in exchange for higher discounts. While CompTel objects to the fact that this commitment is increased at the annual review if the customer's volume under the plan has increased, it does not acknowledge that the customer receives discounts on each line under the plan (including those above the commitment) from the date it is turned up, even though the commitment is only increased on the annual review date. And, of course, it is up to the customer to determine whether to increase its volume of purchases in the first instance in any event, instead of utilizing its own facilities or circuits obtained from other providers.

13. Third, while CompTel asserts that the shortfall charges are excessive, it neglects to point out that, even if a customer has failed to meet the commitment level for an entire year, the shortfall liability only is calculated for the six months prior to the annual review date. Thus, even if the customer fails to meet its revenue commitment for an entire year, it is only responsible to pay a shortfall charge for half of the period.

14. Finally, CompTel fails to mention that Verizon offers a rate stability provision, which enables a customer to terminate without liability if rates increase other than due to action by the FCC. These flexible terms and conditions are exactly what one would expect in such a competitive segment of the market.

II. THE EVIDENCE IN THE RECORD SHOWS THAT THE PROVISION OF SPECIAL ACCESS SERVICES IS ROBUSTLY COMPETITIVE.

A. Commenters' Claims To The FCC That Special Access Services Are Not Competitive Are Contradicted By Their Own Public Statements.

15. In my declaration, I submitted hundreds of pages of evidence from multiple sources, including collocation inspections, independent third-party data from GeoTel and GeoResults, publicly available statements from carriers, and evidence of intermodal competition, all of which demonstrate that the provision of special access services is competitive. I also explained that these data are underinclusive because the best sources of competitive information—the competitors themselves—have little incentive to provide a complete picture of their networks.

16. Without providing evidence, several parties asserted that the provision of special access services is not competitive. However, a simple review of public information on these carriers' websites tells a dramatically different story.

17. In its comments, Time Warner Telecom claims that ILECs are increasing rates for special access services and, consequently, there is an "immediate need" to "constrain" ILEC market power. Time Warner Telecom 3. In contrast, Time Warner Telecom has stated publicly that "[t]he majority of our revenue continues to be derived from services provided to our customers exclusively through our own network facilities." *See* Lew Reply Ex. 1 (a).[1] And, in 2004, Time Warner Telecom reported that it increased its on-net buildings to nearly 5,300, which represented "a 21% increase year over year." Lew Reply Ex. 1(c).[2] Time Warner Telecom is also expanding services and into new markets, recently launching a business-class VoIP offering in 21 markets. In addition, Time Warner Telecom has said that "[i]n instances where we need services from ILECs to connect our remote customers to our vast fiber network, we purchase those under special access tariffs or under agreements with the ILECs." *See* Lew Reply Ex. 1(a). Though Time Warner Telecom says that prices for ILEC special access are high, Time Warner Telecom nonetheless reports substantial earnings growth in its filings before the Securities and Exchange Commission. On May 2, 2005, for example, Time Warner Telecom announced "solid first quarter 2005 results fueled by 29% data and Internet growth and 16% enterprise revenue growth year over year." *See* Lew Reply Ex. 1(c).

[1] Press Release, Time Warner Telecom, Time Warner Telecom Not Impacted By UNE Ruling (June 10, 2004), available at http://www.twtelecom.com/Documents/Announcements/News/2004/News2004_UNE_Ruling.pdf; *see also* Press Release, Time Warner Telecom, Time Warner Telecom Applauds U.S. Eighth Circuit Court of Appeals Ruling Supporting Special Access Performance Reporting (Aug. 25, 2004), available at http://www.twtelecom.com/Documents/Announcements/News/2004/News2004_MN_Ruling1.pdf ("Time Warner relies principally upon its own network facilities") (attached hereto as Lew Reply Ex. 1(b)).

[2] Press Release, Time Warner Telecom, Time Warner Telecom Announces Solid First Quarter 2005 Results Fueled by 29% Data and Internet Growth and 16% Enterprise Revenue Growth Year over Year (May 2, 2005), available at http://www.twtelecom.com/Documents/Announcements/News/2005/TWTC_Q1_05_Press_Release12.pdf.

18. Similarly, SAVVIS, which states that it purchases the majority of its special access services from non-ILEC provider, Broadwing/SAVVIS 7, nonetheless argues that the Commission must reform special access rate regulation to address ILECs' "unreasonable" rates of return and "exclusionary" pricing practices. *Id.* 10-24. Yet SAVVIS's public statements and Securities and Exchange Commission ("SEC") filings show that it is succeeding in the marketplace under existing conditions. For example:

- "Stable financial position, with $55.4 million in cash on the balance sheet." (As of 12/31/2004). *See* Lew Reply Ex. 2(a).[3]
- "Reported gross margin of $178.9 million on revenue of $616.8 million in 2004." *Id.* By comparison, revenue for 2003 was $252.9 million. See Lew Reply Ex. 2(b).[4]
- "SAVVIS's gross profit for the first quarter of 2005 grew 77%, to $53.1 million from $29.9 million in the first quarter 2004." *See* Lew Reply Ex. 2(c).[5]
- 2004 adjusted EBITA of $14.4 million for 2004, which was a $15.6 million improvement from 2003. *See* Lew Reply Ex. 2(b), 4.
- Expanded relationship with Reuters, as well as new agreements with a number of other customers. *See* Lew Reply Ex. 2(d).[6]

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[3] SAVVIS Facts and Figures at a Glance (2004), available at http://www.savvis.net/NR/rdonlyres/1150CCDC-20D1-4CDA-9AA7-E77E21558A69/7200/factsglance.pdf.

[4] SAVVIS, 2004 Summary Annual Report 4 (2005), available at http://library.corporate-ir.net/library/10/100/100107/items/147077/SVVSAR04.pdf.

[5] Press Release, SAVVIS, SAVVIS Reports First-Quarter 2005 Results (Apr. 25, 2005), available at http://www.savvis.net/corp/News/Press Releases/Archive/SAVVIS Reports First-quarter 2005 Results.htm.

[6] Press Release, SAVVIS, Reuters and SAVVIS Extend and Expand Relationship with New Contract (May 25, 2005), available at http://www.savvis.net/corp/News/Press%20Releases/Archive/Reuters%20and%20SAVVIS%20Extend%20and%20Expand%20Relationship%20with%20New%20Contract.htm. Other new customers include enterprises such as Campmore, G2 Switchworks, Kennan and Associates, Mayer, Browne, Rowe & Maw, Progress Interactive, whitbybird Ltd., and expanded relationships with existing customers, including Ascent Media Group, GoldenSource Corporation, Gray Hawk Systems, True Advantage, with "others to come."

19. PAETEC states that it leases ILEC special access for 95% of its last mile connections to end users and urges the Commission to regulate allegedly "excessive" ILEC special access rates of return. PAETEC 4, 10-23. Yet, PAETEC's Chairman of the Board and CEO, Arunas A. Chesonis, announced PAETEC's "year-over-year access line growth of nearly 33 percent in an industry and economy that are both still struggling." *See* Lew Reply Ex. 3(a).[7] Mr. Chesonis also noted PAETEC's "financial stability." *Id.* Last year, PAETEC announced that it "installed 675,816 access line equivalents on its network as of September 30, 2004" which represents "an increase of 166,200 access line equivalents in service over the September 2003 total." *Id.* PAETEC is also growing, introducing new services, *See* Lew Reply Exs. 3(b)&(c),[8] and expanding into new markets, *see* Lew Reply Ex. 3(d),[9] further evidence of its success.

20. XO Communications, Inc. ("XO"), a facilities-based provider, claims in its comments that there is little competition for special access services and BOCs are in a position to "raise

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[7] Press Release, PAETEC Communications, PAETEC Exceeds 675,000 Access Lines (Oct. 14, 2004), available at ftp://ftp.paetec.com/PDFS/News/2004%20releases/PAETEC_AccessLines_101404.pdf.

[8] Press Release, PAETEC Communications, PAETEC Expands MPLS Networks to 151 Markets (May 13, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_NTTA_062105.pdf; Press Release, PAETEC Communications, PAETEC and NTT American Launch IP Services to Global Financial Markets (June 21, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_MPLS_051305.pdf.

[9] Press Release, PAETEC Communications, PAETEC Expands Service in Northern Virginia (June 1, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_LATA246_060105.pdf; Press Release, PAETEC Communications, PAETEC Opens New Sales Office In Tampa (May 16, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_Tampa_051605.pdf; Press Release, PAETEC Communications, PAETEC Expands MPLS Network to 151 Markets (May 13, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_NTTA_062105.pdf; Press Release, PAETEC Communications, PAETEC Opens New Sales Office In D.C. (Jan 12, 2005), available at ftp://ftp.paetec.com/PDFS/News/2005%20releases/PAETEC_WashDC_011205.pdf.

rivals' costs for essential wholesale inputs." XO 1-13. These statements stand in sharp contrast to XO's SEC filings and public statements:

- "With our extensive array of facilities and fiber networks in local markets across the country, XO can provide a wide range of cost-effective UNE transport and UNE-P alternative solutions" to carriers. *See* Lew Reply Ex. 4(a).[10]
- Voice revenues "increased $55.4 million or 42.3% as compared to the same period in 2004." Data services revenues "increased $15.4 million or 16.6% as compared to the same period in 2004." Integrated voice and data services revenues "increased $29.7 million or 80.2% as compared to the same period in 2004." *See* Lew Reply Ex. 4(b).[11]
- XO has an agreement to provide fixed wireless broadband services to "one of the national mobile wireless carriers" for "primary network connectivity and redundancy." *See* Lew Reply Ex. 4(b) at 12.

B. Carrier Hotels are Prevalent in Verizon Territory.

21. In my declaration, I demonstrated that the current collocation-based triggers are underinclusive because a number of competitors bypass Verizon's network entirely. Lew Decl. ¶¶ 53-57. By simply comparing the collocation inspections that Verizon performed with the GeoTel data, I found that the collocation inspections understated drastically the true degree of competition. *Id.*; Lew Decl. Exs. 4, 5, & 5; Verizon 27, Table 2.

22. In addition to this substantial evidence, I also want to highlight the existence of carrier hotels, which are another example of how collocation understates the degree of competition. Carrier hotels often are located in the same building as a competing carrier's optical backbone hub or gateway location, so collocating carriers are able to gain access to all of the other fiber

[10] Press Release, XO Communications, XO Communications Ready to Provide UNE Alternatives to Carriers Affected by the FCC's New Network Unbundling Rules (Feb. 3, 2005), available at http://www.xo.com/news/214.html.

[11] XO Communications, Quarterly Report (SEC Form 10-Q) 14 (May 9, 2005), available at http://www.xo.com/about/investors/financials/Q1_10Q.pdf.

EXHIBIT 1

Reply Comments of Verizon

WC Docket No. 05-25

July 29, 2005

Lew Reply Declaration Exhibit 1

TIME WARNER TELECOM
POWER DRIVING YOUR NETWORK

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Time Warner Telecom Not Impacted By UNE Ruling

-- FCC Must Limit Market Power of ILECs To Not Exploit Smaller Competitors
-- Clear Regulatory Framework Needed To Ensure American Businesses Remain Competitive

LITTLETON, Colo. —June 10, 2004 --Time Warner Telecom (NASDAQ: TWTC), a leading provider of managed voice and data networking solutions for businesses in 22 states, today reiterated its position that the contested FCC Triennial Review order pertaining to access to the unbundled network elements (UNEs) of incumbent local exchange carriers (ILECs) by competitors, has no impact on Time Warner Telecom. The U.S. Solicitor General decided not to pursue an appeal of that decision.

"Although this decision impacts many competitive providers, Time Warner Telecom, as a fiber facilities-based provider of services for businesses exclusively, does not rely upon UNEs as do other competitors," said Paul Jones, Time Warner Telecom's Senior Vice President, General Counsel and Regulatory Policy. "In instances where we need services from ILECs to connect our remote customers to our vast fiber network, we purchase those under special access tariffs or under agreements with the ILECs. The majority of our revenue continues to be derived from services provided to our customers exclusively through our own network facilities.

"We join in advocating regulatory certainty in place of what is now a swirl of uncertainty around the rules applicable to UNEs, but our issues continue to be directed more toward prohibition of market power abuse, and an appropriate balance between regulation of traditional telecommunications services and IP enabled services, as the FCC deals with the creation of a new regulatory framework. "

"With a stable regulatory framework, American businesses will have the necessary communications tools to compete globally and deliver the benefits of modern communications solutions to their customers," Jones said.

Time Warner Telecom is one of the successful competitive telecom carriers that is leading the deployment of innovative communications solutions to large, medium and small businesses. Its comprehensive metro Ethernet services, integrated voice and data products, and VoIP solutions help businesses operate more efficiently in today's competitive marketplace.

About Time Warner Telecom

Time Warner Telecom Inc., headquartered in Littleton, Colo., is a leading provider of managed network solutions to a wide array of businesses and organizations in 44 U.S. metropolitan areas that require telecommunications intensive services. One of the country's premier competitive telecom carriers, Time Warner Telecom integrates data, dedicated Internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers, and such enterprise organizations as healthcare, finance, higher education, manufacturing, hospitality, state and local government, and military. Please visit www.twtelecom.com for more information.

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optic transmission networks that collocate in or connect with these hotels. As a result, carriers collocating in the hotel obtain direct access to competitive transport networks, as well as indirect access to any ILEC central office or tandem office that is connected to those alternative transport networks. Carrier hotels are prevalent in MSAs throughout Verizon's Territory. For example:

- 2401 Locust Street, Philadelphia, Pennsylvania. Connectivity in this building is "abundant" due to its proximity to "the AT&T central office and the B&O Railroad fiber routing." The building has over 44,000 square feet. Tenants at 2401 Locust include AT&T, Verizon, Level 3, Abovenet, MCI, WilTel, XO, Exelon, Voice Systems, and Cavalier. *See* Lew Reply Ex. 5(a).[12]

- 32 Avenue of Americas, New York, NY. This building is a "true carrier-neutral co-location facility" and operates as an "interconnection powerhouse" "in the heart of New York City." The building offers access to wireless and terrestrial communications service providers, which provide "true business continuity to both the Enterprise user and telecom service provider." Tenants include AboveNet, ALS, AT&T, Bell Canada, Cablevision/Lightpath, Cogent Communications, Con Edison Communications, Digit Global, DirecTV, Dreamxotic, FiberNet, Genesis, Global Crossing, Gigabeam, Keyspan Communications, Level 3, Lexant, Looking Glass, NyserNet, OnFiber Communications, PPL Telecom, Prodigy, Qwest, RAI Networks, RCN, Time Warner Telecom, T-Mobile/Voicestream, T-Systems, Towerstream, Tyco Telecommunications, XO, and Yipes Communications. *See* Lew Reply Ex. 5(b).[13]

23. In addition to the foregoing, in Appendix A to my reply declaration, there is a chart highlighting operators of carrier hotels in selected MSAs within Verizon's Territory.

III. VERIZON DOES NOT ERECT BARRIERS TO MIGRATIONS OF CIRCUITS TO OTHER CARRIERS.

24. Although no commenter challenged Verizon's procedures regarding migrations, commenters did make general claims that price cap LECs make it difficult to groom circuits to alternative providers. *See e.g.*, WilTel 15; Broadwing/SAVVIS 25. Verizon does *not* impose

[12] Carrier Hotels: 2401 Locust Street, Philadelphia, PA, available at http://www.carrierhotels.com/properties/2401locust/.

[13] Carrier Hotels: 32 Avenue of the Americas, New York, NY, available at http://www.carrierhotels.com/properties/rudin/.

any absolute limits on the number of migrations that it will perform. Rather, Verizon treats all migrations as projects to be addressed in light of available resources (both Verizon's and the customer's) and the customer's needs. Verizon negotiates each phase of the migration with the carrier customer, from the start date to the migration intervals. And Verizon commits substantial resources to completing migrations in a timely fashion, in accordance with the terms of the negotiated projects. In 2004, Verizon migrated over **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** special access circuits to competitive providers and, currently, **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** of Verizon's technicians are working to process migration orders.

25. It is also important to recognize that any migration delay or limitation could easily be caused by the carrier or end user, not Verizon. Migrations are worked as projects precisely because there is a need for the requesting carrier to perform certain functions to assure the circuit is cut over without mishap. Yet, a review of all migrations in Verizon East for the first six months of 2005 reveals that where scheduled work is missed, over seventy percent (70%) of the time the cause is customer or end user delays.[14] In short, Verizon is committed to working with all of its customers to migrate projects, optimize the use of resources, and minimize service outages.

[14] For the first six months of 2005 in Verizon East, Verizon received **[BEGIN VERIZON PROPRIETARY** **[END VERIZON PROPRIETARY]** migration requests. Of these migrations, there were **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** instances where scheduled work was missed, of which **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** of those misses were caused by customer or end user delays.

26. Sprint's claim that Verizon's nonrecurring coordinated retermination charge of $380 is an obstacle to switching carriers is incorrect. Sprint 7 n.10. As an initial matter, carrier customers have the option of avoiding the coordinated retermination charge by foregoing coordination, disconnecting the circuit, and submitting a separate new connect of service order to the new location. Moreover, the coordinated retermination charge is nondiscriminatory: it applies whenever a Verizon customer voluntarily asks Verizon to reterminate an existing circuit to a different primary location (*i.e.*, the POP-end of the circuit) served by a different wire center, regardless of whether the affected portion of the circuit remains on Verizon's network or is transferred to another provider. For example, if a carrier has a circuit running from an end user to a primary location served by Wire Center A and wants to reterminate the circuit to a new primary location served by Wire Center B, a coordinated retermination charge would apply whether the circuit is reterminated from one Verizon facility to another Verizon facility, from a Verizon facility to an alternative provider, or from an alternative provider to a Verizon facility.

IV. THE COMMISSION SHOULD REVISE ITS RULES TO PERMIT CARRIERS TO NEGOTIATE COMMERCIAL CONTRACTS IN RESPONSE TO COMPETITION.

27. I detailed in my declaration that the existing special access rules often hinder Verizon's ability to respond to competition and develop a competitive offer for customers. *See* Lew Decl. ¶¶ 53-57. I summarize briefly below a few examples of such obstacles to highlight the need for regulatory relief.

28. **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** asked Verizon to develop a competitive offer for a SONET ring product in Illinois. Verizon was unable to develop a competitive offer because the specific Illinois MSA did not have pricing

flexibility. Verizon did not win this business and can only assume that they bought the service from another carrier.

29. **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** requested a competitive offer for Intellilight Broadband Transport (IBT) point-to-point service for dedicated transport between collocation arrangements in various wire centers, valued at almost **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]**. Verizon could not develop a competitive offer on the IBT offer because the New Bedford-Fall River and Pittsfield MSAs, wherein some of the wire centers are located, do not have Phase I or Phase II pricing flexibility relief.

30. This concludes my reply declaration.

APPENDIX A
COMPETITIVE COLLOCATION PROVIDERS IN THE TOP 50 MSAS LOCATED IN VERIZON'S TERRITORY

MSA (rank)	**Competitive Collocation Providers (number of collocation centers in MSA)***
New York-Newark-Edison, NY-NJ-PA (1)	Switch and Data (3); TELEHOUSE America (3); FiberNet Telecom (3); Equinix (2); Internap; Access^{IT} (3); Tel^{X}; MetroNexus; Cogent/PSInet; Level 3 (3); NEON Communications; Tyco Telecommunications (2); GI Partners; NTT/Verio; Navisite
Los Angeles-Long Beach-Santa Ana, CA (2)	Switch and Data; TELEHOUSE America; FiberNet Telecom; Equinix (2); Cogent/PSInet; Level 3 (2); Tyco Telecommunications (2); CRG West; GI Partners; NTT/Verio; Navisite; C I Host; Internap; Access^{IT}
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD (4)	Switch and Data (2); Level 3; InFlow; Internap; GI Partners
Dallas-Fort Worth-Arlington, TX (5)	Switch and Data (3); Equinix; Collocation Solutions; Level 3; Colo4Dallas; GI Partners; Navisite; C I Host; Internap; Cogent
Washington-Arlington-Alexandria, DC-VA-MD-WV (7)	Switch and Data (3); Equinix; Internap; Cogent/PSInet; Level 3; NEON Communications; Primus (4); CRG West; NTT/Verio; Navisite
Boston-Cambridge-Quincy, MA-NH (10)	Switch and Data; Internap; Cogent/PSInet; Level 3; NEON Communications (multiple sites); Primus; Navisite
Riverside-San Bernardino-Ontario, CA (13)	n/a
Seattle-Tacoma-Bellevue, WA (15)	Switch and Data (2); Internap; Level 3; Tyco Telecommunications
Baltimore-Towson, MD (19)	Level 3
Pittsburgh, PA (20)	Switch and Data; Cogent/PSInet; InFlow
Tampa-St. Petersburg-Clearwater, FL (21)	Switch and Data; Peak 10; Level 3;
Portland-Vancouver-Beaverton, OR-WA (25)	InFlow; Tyco Telecommunications (3)
Orlando, FL (30)	Colo Solutions; Level 3
Providence-New Bedford-Fall River, RI-MA (32)	NEON Communications
Virginia Beach-Norfolk-Newport News, VA-NC (33)	n/a
Buffalo-Cheektowaga-Tonawanda, NY (42)	Switch and Data
Hartford-West Hartford-East Hartford, CT (44)	NEON Communications
Richmond, VA (46)	n/a
Rochester, NY (49)	NTT/Verio

*There may be instances where numerous carriers operate collocation hotels at one location. In these instances, each individual carrier has been separately counted as having a collocation hotel.
Sources: *See* Below

Switch and Data. Switch and Data, *Site Locations*, http://www.switchanddata.com/sitelocations.asp.

TELEHOUSE America. TELEHOUSE America, *Facilities*, http://www.telehouse.com/index.php?alias=facilities.

FiberNet Telecom Group. FiberNet Telecom Group, Inc., Form 10-K (SEC filed Mar. 30, 2005), http://www.sec.gov/Archives/edgar/data/1001868/000119312505064820/d10k.htm.

REDACTED – FOR PUBLIC INSPECTION

Equinix. Equinix, *Equinix Location Map*, http://www.equinix.com/prod_serv/ibx/locationmap.htm.

Internap. Internap, *Colocation Services*, http://www.internap.com/products/locationmap.html.

Access^{IT}. Access^{IT}, *AccessColocenters: Locations*, http://www.accessitx.com/l4_cololocations.htm.

Colo Solutions. Colo Solutions, *Site Locations*, http://www.colosolutions.com/html/infrastructure.html.

Tel^{X}. Tel^{X}, *Who is Tel^{X}?*, http://www.telx.com/about.cfm.

MetroNexus. MetroNexus, *Properties Home*, http://www.metronexus.com/properties/properties_index.

Collocation Solutions. Collocation Solutions, *Data Centers – Locations*, http://www.collocationsolutions.com/datacenters/locations.htm.

eXchange. eXchange, *Locations*, http://www.e200paul.com/f_locations.html.

Cogent/PSInet. PSInet, *Markets Served*, http://www.cogentco.com/htdocs/colocation.php?func=locations

Peak 10. Peak 10, *Peak 10 Profile*, http://www.peak10.com/about/index.asp.

Level 3. Level 3, *(3)Center Colocation*, http://www.level3.com/558.html.

Sungard/InFlow. InFlow, *Inflow is Now SunGard Availability Services, http://www.availability.sungard.com/SASCMS/Templates/DetailTemplate2005.aspx?NRMODE=Published&NRORIGINALURL=/inflow/&NRNODEGUID={3E42AF84-C2D1-4C38-85BB-A29F7675F6E7}&NRCACHEHINT=Guest.*

Colo4Dallas. Colo4Dallas, http://www.colo4dallas.com/.

NEON Communications. NEON Communications, *Colocation*, http://www.neoninc.com.

Tyco Telecommunications. Tyco Telecommunications, *Colocation Centers*, http://www.tycotelecom.com//pdfs/Colocation_Centers.pdf

Primus. Primus, *Global Network Map: Data Centers*, http://www.primustel.com/docs/networkmap.html.

CRG West. CRG West, *About Us*, http://www.crgwest.com/About.aspx.

GI Partners. GI Partners, *Portfolio*, http://www.gipartners.com/portfolio.asp.

ColoServe. ColoServe, *Data Centers*, http://www.coloserve.com/datacenters.html.

NTT/Verio. NTT/Verio, *Data Centers: Locations*, http://www.verio.com/hosting/powerplatform/hosting/colocation/locations.cfm.

Navisite. Navisite, *Knowledge Base – Data Center Locations*, http://www.navisite.com/right_column_sublinks.aspx?id=39.

365 Main. 365 Main, *Company*, http://www.365main.net/company.html.

Texas.net. Texas.net, *Texas.net Internet Data Centers, http://www.texas.net/data_centers.html.*

CI Host. C I Host, *Welcome, http://www.cihost.com/.*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 26, 2005

Quintin Lew

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Time Warner Telecom Applauds U.S. Eighth Circuit Court of Appeals Ruling Supporting Special Access Performance Reporting

--Supports Minnesota PUC decision to require Qwest performance reporting when selling special access circuits

LITTLETON, Colo. —August 25, 2004 --Time Warner Telecom (NASDAQ: TWTC), a leading provider of managed voice and data networking solutions for businesses in 22 states, today applauded an Aug. 23rd ruling by the United States Court of Appeals for the Eighth Circuit that supports a Minnesota PUC order requiring Qwest to report performance measures when providing special access circuits to competitors. The special access lines that carry both interstate and intrastate traffic were at issue in the case.

The ruling overturns the Minnesota District Court order which enjoined the Minnesota PUC from requiring local incumbent service provider Qwest to provide performance reports when providing special access circuits to competitors. Time Warner Telecom and WorldCom, Inc. filed an appeal to the District Court ruling because performance reporting is critical in maintaining the high quality of service that competitive telecom companies provide to customers.

"Time Warner Telecom is very pleased with the Court of Appeals ruling, as well as the initiatives of the Minnesota Public Utilities Commission that gave rise to the legal battle," said Paul B. Jones, Sr. Vice President and General Counsel for Time Warner Telecom. "We will rely on this decision as we continue to advocate our positions.

"Although Time Warner Telecom relies principally upon its own network facilities, we use special access services purchased from incumbent local carriers like Qwest, to reach customers not directly served by our fiber network, where the traffic carried for our customers is mixed state and interstate.

"In instances where we need services from incumbents to connect our remote customers to our vast fiber network, we purchase those under special access tariffs. This allows us to deliver innovative communications services with on-net connectivity to meet customers' requests for our services. As a customer for special access services, we have long advocated that the states and the FCC adopt performance measures and reporting requirements," Jones added.

In reaching its decision, the Eighth Circuit said that "the question presented in the case is whether the order issued by the FCC through its jurisdictional separations procedure preempts the Minnesota Commission's authority to regulate the quality of special access services on interstate lines provided by Qwest and other companies." The court noted that jurisdictional separations procedures are designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between state and interstate jurisdictions rather than to establish plenary federal authority over a telecommunications service.

"There is no question that there is a clear distinction between the FCC's jurisdictional separations principles and the regulation of the manner in which special access services are provided." Jones said.

Elsewhere, the court reasoned that "there is no dispute in this case that the FCC has the power to preempt states from establishing standards and requiring reports relating to special access services. The fighting issue is whether the FCC actually intended to do so when it promulgated the 10% Order" under its jurisdictional separations procedures. The Court acknowledged that the FCC could have done so and that it yet could do so in the pending notice of proposed rulemaking regarding performance measurement and standards for Interstate Special Access. That notice was released in 2001, but the FCC has not adopted rules under it. Despite the FCC's power to preempt the states from issuing rules setting performance measures and reporting requirements for special access, the Eighth Circuit found that the FCC has not done so, and that the Minnesota State Commission acted within its authority in issuing performance measures and reporting requirements.

Time Warner Telecom is one of the successful competitive telecom carriers that is leading the deployment of innovative communications solutions to large, medium and small businesses. Its comprehensive metro Ethernet services, and integrated voice and data product solutions help businesses operate more efficiently in today's competitive marketplace.

About Time Warner Telecom

Time Warner Telecom Inc., headquartered in Littleton, Colo., is a leading provider of managed network solutions to a wide array of businesses and organizations in 44 U.S. metropolitan areas that require telecommunications intensive services. One of the country's premier competitive telecom carriers, Time Warner Telecom integrates data, dedicated Internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers, and such enterprise organizations as healthcare, finance, higher education, manufacturing, hospitality, state and local government, and military. Please visit www.twtelecom.com for more information.

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Time Warner Telecom Announces Solid First Quarter 2005 Results Fueled by 29% Data and Internet Growth and 16% Enterprise Revenue Growth Year over Year

LITTLETON, Colo. – May 2, 2005 – Time Warner Telecom Inc. (NASDAQ: TWTC), a leading provider of managed voice and data networking solutions for business customers, today announced its first quarter 2005 financial results, including $171.6 million in revenue, $60.0 million in Modified EBITDA[1] ("M-EBITDA") and a net loss of $35.2 million.

"Our business progressed with another solid quarter," said Larissa Herda, Time Warner Telecom's Chairman, CEO and President. "We have continued to deliver overall revenue and customer growth with healthy margins, fueled by 29% growth in data and Internet revenue, 16% growth in enterprise revenue and 1% growth in carrier revenue, year over year. By listening to our customers, making the right investments and enabling companies to operate more efficiently through our industry leading Ethernet solutions, we are the forerunner of what businesses need."

Highlights for the Quarter

For the quarter ending March 31, 2005, the Company –

- Sequentially grew enterprise revenue $2.5 million and carrier revenue $1.1 million over the fourth quarter
- Grew enterprise revenue $12.5 million, or 16%, year over year
- Grew data and Internet revenue $8.3 million, or 29% year over year
- Produced M-EBITDA of $60.0 million. Achieved M-EBITDA margin of 35%.
- Grew buildings served directly by the Company's fiber network to nearly 5,300, a 21% increase year over year
- Grew customers to more than 10,700 driven by strong enterprise growth, a 17% increase year over year
- Launched a business-class VoIP offering in 21 markets
- Issued $200 million of additional financing with a 2014 maturity, and redeemed $200 million of 2008 debt maturities

Sequential Results – First Quarter 2005 compared to Fourth Quarter 2004

Revenue

Revenue for the quarter was $171.6 million, as compared to $168.0 million for the fourth quarter of 2004, an increase of $3.6 million sequentially. The primary components of the change included:

- $2.5 million increase in revenue from enterprise customers, primarily from the sale of data and Internet services
- $1.1 million increase from carriers due to stronger sales

By product line, the percentage change in revenue for the first quarter over the fourth quarter was as follows:

- 6% increase for data and Internet services due to success with Ethernet and IP-based product sales
- 2% increase for dedicated transport services, primarily due to increased carrier sales
- 1% decrease in switched services

Disconnects for the first quarter resulted in a loss of $2.3 million of monthly revenue for the current quarter, as compared to $2.1 million in the fourth quarter of 2004 and $2.4 million for the first quarter of 2004.

M-EBITDA and Gross Margins

M-EBITDA for the quarter was $60.0 million versus $54.6 million for the fourth quarter of 2004. A portion of the increase related to $4 million of favorable tax resolutions in the first quarter, contributing to the increase in the M-EBITDA margin over the prior quarter. M-EBITDA margin was 35% compared to 33%, and gross margin was 61% compared to 60% for the first quarter of 2005 and the fourth quarter of 2004, respectively. The Company utilizes a fully burdened gross margin, including network costs, and personnel costs for customer care, provisioning, network maintenance, technical field and network operations.

Net Loss

The Company's net loss narrowed to $35.2 million, or $.30 loss per share for the quarter, compared to a net loss of $36.1 million, or $.31 loss per share for the fourth quarter of 2004. The decrease in the net loss reflected an increase in M-EBITDA, lower depreciation expense due to retirement of assets in the fourth quarter that did not recur, and an increase in interest expense related to financing activities in the current quarter. Costs associated with financing activities represented $.09 loss per share in the current quarter.

Year over Year Results – First Quarter 2005 compared to First Quarter 2004

Revenue

Quarterly revenue was $171.6 million for the current quarter as compared to $161.6 million for the first quarter of 2004, an increase of $10.0 million. The primary components of the change included:

- $12.5 million increase in revenue from enterprise customers, primarily from the sale of data and Internet services
- $3.2 million increase from carriers, primarily due to increased transport sales
- $2.3 million decrease related to a favorable MCI bankruptcy settlement in the first quarter of 2004 that did not recur in the current quarter
- $1.3 million decrease from related parties, primarily due to a decrease in transport services being purchased by their Internet-related businesses
- $2.1 million decrease in intercarrier compensation due to reduced minutes of use and rate reductions

By product line, the percentage change in revenue year over year was as follows:

- 29% increase for data and Internet services due to success with Ethernet and IP-based product sales
- 2% increase for dedicated transport services, primarily due to increased carrier sales
- 6% increase for switched services, primarily due to growth in bundled voice products

M-EBITDA and Margins

M-EBITDA for the quarter was $60.0 million versus $52.0 million in the same period last year. A portion of the increase related to $4 million of favorable tax resolutions in the current quarter, offset by a favorable $2.7 million MCI bankruptcy settlement recognized in the first quarter of 2004, which did not recur.

M-EBITDA margin was 35% for the quarter. This compared to 32% for the same period last year. Gross margin was 61% for the current quarter. This compared to 60% for the same period last year.

Net Loss

The Company's net loss narrowed to $35.2 million, or $.30 loss per share, for the current quarter. This compares to a net loss of $38.8 million, or $.34 loss per share for the same period last year. The decrease in net loss is primarily related to an increase in M-EBITDA, offset by an increase in interest expense, reflecting higher interest rates and financing costs year over year. Financing costs represented a loss per share of $.09 and $.08 for the first quarter of 2005 and 2004, respectively.